IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.556 OF 1997

1. Rajaram Lala Ahire,)
Age 60 years,)

2. Prakash Rajaram Ahire,)
Age 30 years,)

3. Sarjabai Rajaram Ahire,)
Age 45 years.)

All R/o.Wasol, Taluka - Satana,)
District - Nashik.).. Appellants.

Vs.

The State of Maharashtra.).. Respondent

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Shri P.K.Dhakephalkar for the appellants.

Smt.V.R.Bhonsale, APP for State.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 30TH JUNE, 2005.

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Being aggrieved by their conviction for offences punishable under Sections 498A, 302 and 201 read with Section 34 of Indian Penal Code and the resultant sentences imposed upon them by the learned Additional Sessions Judge, Malegaon, District- Nashik, the appellants have preferred this appeal.

2. Facts which led to the prosecution of the appellants, along with one Ramesh Rajaram Ahire, who was acquitted, are as under:

3. Mangala, daughter of Bhila Ukha Khairnar, was married to accused No.2-Prakash Rajaram Ahire about two years prior to the incident. Accused No.1 - Rajaram Lala Ahire is father and Accused No.4 - Sarjabai Rajaram Ahire is mother of the said Prakash, Accused No.2. Accused No.4 Sarjabai is sister of Mangala's father Bhila. After the marriage, Mangala went to reside with her husband and in-laws. After about four months, ill-treatment of Mangala began. Her husband Prakash hit her with a stone on her waist. Mangala's father and mother-in-law also had assaulted

her. When Bhila, father of Mangala, noticed this fact, he took his daughter with him and did not send Mangala to her matrimonial home for about four months. On assurance being given by the accused persons and Gangadhar, brother of accused No.1, that Mangala would be treated well, Mangala was sent back to her matrimonial home. Thereafter, for about 4 to 6 months, Mangala was treated well.

4. When Bhila had gone to attend the marriage of grand-daughter of Gangadhar, he inquired with Mangala and Mangala revealed that her harassment had re-commenced and therefore Mangala wanted to come back with her father. Bhila again requested the accused persons not to ill-treat his daughter Mangala. On 11th June, 1995, Bhila's 2nd son, Baliram, was to get married. Therefore, on 5th June, 1995, Bhila and his elder son Samadhan went to the house of accused persons with an invitation card. One Govind accompanied Samadhan. Samadhan was supposed to have brought Mangala for the marriage. Samadhan reported that Mangala's in-laws did not allow her to accompany him. Mangala had come upto Nagbaba Mandir of village Wasol, however, her husband and in-laws beat her and

took her back. They told Samadhan that if Rs.2,000/- and gold-ring are given to accused No.2 Prakash, then only they will attend the marriage of Baliram. They further threatened to kill Mangala.

5. On 6th June, 1995, the complainant and others visited the house of accused and on inquiry, they learnt that Mangala was not at home. On 6th June 1995 itself, a missing report had been lodged by Bhila, which is at Exhibit 30. The dead body of Mangala was later found in the river Girna and the same was sent for post-mortem examination. It was found that Mangala had died of Asphyxia, due to suffocation. Police registered the offence, and on completion of investigation, a charge sheet was sent to the learned Judicial Magistrate, First Class, Satana, who committed the case to the Court of Sessions at Malegaon, on finding that an offence triable exclusively by the Court of Sessions was made out.

6. The learned Additional Sessions Judge, Malegaon, framed the charges of offence punishable under Sections 498A, 302 and 201 read with Section 34 of Indian Penal Code against accused Nos.1, 2 and 4

and the charge of offence punishable under Sections 498A, 302, 304(B) and 201 read with 34 of Penal Code against accused No.3. All the accused persons pleaded not guilty to the charges levelled against them and claimed to be tried. They were therefore put on trial.

7. The prosecution examined in all nine witnesses in order to bring home the guilt of the accused. The learned Additional Sessions Judge examined the accused under Section 313 of Cr.P.C., and on considering the evidence in light of arguments advanced, proceeded to convict accused Nos.1, 2 and 4 for the offences punishable under Sections 498A, 302 and 201 read with Section 34 of Indian Penal Code. He sentenced them to suffer two years R.I. and fine of Rs.1,000/- each and in default to suffer 3 months R.I.each for offence under Section 498A; imprisonment for life and fine of Rs.2,000/- each and in default to suffer 6 months R.I.each for offence under Section 302; and R.I.for five years and fine of Rs.1,000/- each and in default to suffer R.I. for 3 months for offence punishable under Section 201 read with 34 of Penal Code, respectively. The learned Additional Sessions Judge,

however, acquitted accused No.3 for offences punishable under Sections 498A, 302, 304(B) and 201 read with 34 of Penal Code. Being aggrieved thereby, accused Nos.1, 2 and 4, the appellants herein, have filed the present appeal.

8. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for State. Learned counsel for the appellants submitted that the learned Additional Sessions Judge had curiously convicted accused No.4 of offence punishable under Section 201 read with 34 of Penal Code when there was no charge of the said offence against Sarjabai. Likewise, Accused No.1 was convicted for an offence punishable under Section 498A of Indian Penal Code when there was no charge against him for the said offence. Ordinarily in a criminal trial, a conviction could be handed down only after charge of offence has been framed since the accused is entitled to know what charges he has to meet. Defects if any in the charge can be cured by amending charge at an appropriate stage, and therefore, if prejudice is not shown to have been caused, that would not vitiate trial. In this case, all accused persons were

represented by the same Advocate. Therefore, though undesirable this defect in the charge itself need not lead to a wholesale rejection of prosecution case. We express our anguish at the omission of the learned Additional Sessions Judge to check up of what charges were framed before he proceeded to hand down conviction, and proceed to examine the arguments advanced with reference to the evidence tendered before the Trial Judge.

9. The learned Additional Sessions Judge has acquitted accused No.3 of the charge of dowry death. Indeed, there is nothing in the prosecution case to indicate that the victim was subjected to ill-treatment or met with her death on account of failure by her relatives to pay dowry or comply with a demand in connection with dowry, as defined under Section 2 of the Dowry Prohibition Act, 1961. Learned counsel for the appellants drew our attention to a decision of the Apex Court in **Satvir Singh & Ors. v. State of Punjab & Anr,** reported in AIR 2001 SC 2828 where in paragraph 21, the Court observed thus:-

"Thus, there are three occasions related to

dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. **There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".** Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage." (Emphasis supplied.)

Learned counsel for the appellants submitted that even if demand referred to in this case is taken at its

face value, it may be a customary payment of money in connection with ceremonies prevalent in different societies, not enveloped within the ambit of dowry, as observed by the Apex Court. It was pointed out that FIR at Exhibit 31 itself shows that the demand was for gold-ring and Rs.2,000/- in cash to be given in the marriage of Baliram, brother of Samadhan. Therefore, this demand was obviously not in connection with the marriage of victim with Prakash. In any case, since the learned Trial Judge has acquitted accused No.3 of the offence punishable under Section 304(B), it is not necessary to consider the said aspect of the matter. The case would have to be considered from the point of view of cruelty and murder.

10. It may be seen that the parties are very closely related to each other. Complainant P.W.1 Bhila states that accused No.4 Sarjabai is his real sister. Thus, the victim and accused Prakash were infact first cousins.

11. P.W.1 Bhila stated that, about 4 to 6 months after the marriage, the accused started harassing Bhila's daughter Mangala for demand of gold-ring and

sum of Rs.2,000/- for buying a steel cupboard. This seems to be a new story which does not find place in the report, Exhibit-31. The report shows that one year after the marriage, when P.W.1-Bhila brought Mangala to parental home, it was noticed that Mangala was limping and then Mangala complained that she was beaten by her in-laws. It may be seen that the complainant's village Varhale and the village of accused Wasol are in the same District of Nashik, and therefore, it is difficult to imagine that during the period of one year, if ill-treatment had commenced after first four to six months of the marriage, the parents did not come to know of it particularly when mother-in-law of Mangala is the real sister of complainant-Bhila.

12. It thus seems that, as per Exhibit-31, complainant Bhila did not send his daughter to her matrimonial home for about four months. Though this was unconnected with any demand, it is apparent that demand of gold-ring and cash of Rs.2,000/- was inserted even for this first occasion of discord by P.W.1-Bhila in his evidence, without making such a statement at Exhibit-31. It seems that thereafter

Mangala had gone to her matrimonial home and again some ill-treatment had commenced, after few months. It is pertinent to note that this ill-treatment is not stated to be on account of any unlawful demand or failure on the part of Bhila-the complainant to meet the said demand, as may be seen from the report Exhibit-31. Contrary statements in course of evidence in the Court appear to be mere improvements. Therefore, it cannot be said that the facts disclosed would fulfil the requirements of Explanation-B of Section 498A of Indian Penal Code regarding ill-treatment referable to failure to meet unlawful demand.

13. This necessitates examination of case to find out whether willful conduct was of such a nature so as to cause grave injury to the woman. There appears to be no previous reports with police on record of this case. Thus, ex-post-facto accusation of the complainant and family members could be discounted as emanating from the heart of a father, who had lost his daughter, in the moment of grief.

14. This restricts the scrutiny of evidence to one

incident of visit of Samadhan to matrimonial home of victim Mangala. P.W.1-Bhila obviously had no first hand knowledge about his visit. He learnt of it from his son Samadhan who has been examined as P.W.2. Samadhan stated that he had gone on his motor-cycle to give wedding invitation cards to accused persons. Accused No.1 told Samadhan that Mangala will be sent to attend the marriage only on Mangala's parents giving Rs.2,000/- and gold-ring and further threatened that otherwise she would be killed. Samadhan stated that he had assured accused No.1 that accused No.1 should come for the marriage and that the accused would get everything. Thus, it is not that Samadhan had refused to comply with the demand so as to provoke accused persons into ill-treatment of Mangala.

15. Samadhan then stated that he requested Accused No.4 - mother-in-law Sarjabai and his own real Aunt i.e. father's sister, to send Mangala with him whereupon accused No.4 told Samadhan, after being gifted with customary bangles and a blouse (Choli - Bangadi), Mangala would be sent. He stated that he then came back and reported to his father.

16. Curiously the witness gives a story of Mangala being dragged by accused Nos.1 to 4 back to matrimonial house. He states that when he and his friend came upto Nagbaba Mandir of village of accused, Mangala came after them but Mangala was dragged back by accused Nos.1 to 4. Samadhan claims to have followed accused Nos.1 to 4 and tried to convince them not to ill-treat Mangala but Samadhan was pushed down from the Verrandah of the house of accused. P.W.2-Samadhan was accompanied by one Govind Khairnar. However, the said Govind Khairnar had not been examined by the prosecution. Now, if Samadhan had gone on his motor-cycle, it must be presumed that he must have left on the motor-cycle from the house of accused. It is not clear as to how the victim would come after Samadhan upto the temple of Nagbaba of village of accused. The story appears to be strange. There is no other evidence about ill-treatment of Mangala on 5th June, 1995.

17. It seems that on Samadhan making report to his father Bhila, his father Bhila - P.W.1 along with Nathu Zipru, Kautik Rambhau, Motiram Daval, etc. had gone to the house of accused on the next day. P.W.1

states that he inquired with accused about Mangala and was told that Mangala was not at home and that she had gone after Samadhan. Whereupon, Bhila claims to have exclaimed that Mangala was finished off by the accused persons. An altercation followed. P.W.2 Samadhan had not joined his father in the visit to the house of accused on the next day. Nathu Zipru who accompanied Bhila has been examined as P.W.4. Nathu Zipru stated that on learning from Samadhan that Mangala was beaten up by accused persons, he (Nathu) accompanied Bhila (P.W.1) to the house of accused where Sarpanch and Police Patil of village Wasol had come. Nathu also stated of an altercation.

18. P.W.3-Kisan Keda Bhamre, Police Patil of village Wasol, stated that on 6th June, 1995 Bhila and others of village Varhale had come to the accused and altercation took place. He too states that accused No.1 told that Mangala had gone with her brother Samadhan. Contrary to what P.W.-Nathu Zipru stated, this witness, P.W.3 Kisan, stated that Sarjabai told Bhila that she was searching for Bhila's daughter. He does not state about Sarjabai rushing at Bhila with Chappal. This is the only evidence about exchanges

between the parties.

19. P.W.5 Vasant Uttam Pagar stated that after the police arrived, he had taken out the dead body of Mangala from Dhabla Doh of river Girna near the field of accused. He proved contents of panchanama Exhibit 37. Though the river bank was said to be shallow, the word "Doh" assumes significance, since "Doh" is placed where water is ordinarily deep. P.W.3-Police Patil also stated that he learnt from the accused Rajaram that the dead body of victim was floating in river Girna and so he went to the spot.

20. P.W.6-PSI Rajendra Trambak Shete and P.W.7-API Kisan Bhagwan Gawli are the officers who conducted investigation. P.W.8- Hanumant Madhavrao Haralkar, Medical Officer, who conducted post-mortem on the dead body of Mangala. P.W.8 stated that dead body was decomposed and hence no external marks of violence were seen. He however stated that there was no sign of drowning. According to him, the death was possibly caused due to Asphyxia, due to suffocation. He was cross-examined at length on behalf of defence and it was sought to be suggested that the death was due to

drowning. He, however, denied the said suggestion. In view of this, it will have to be taken that the victim died of Asphyxia prior to her body being thrown in the river. This may have weighed with the trial Judge in concluding that only members of the household could strangulate and thrown her body in river.

21. The learned Additional Sessions Judge seems to have convicted the accused of murdering Mangala because the accused were last seen together with victim and possibly had a motive to kill Mangala. The evidence of being last seen together with victim Mangala comes from the deposition of P.W.2-Samadhan but the same does not assume any significance since the victim was a part of household of accused, and therefore, ordinarily Mangala would have been with accused.

22. It is doubtful whether, only because the victim was a part of household of accused, the accused could be held guilty of murdering the victim Mangala, who died of Asphyxia and her dead body was found in the river. The conclusions drawn by the learned Additional Sessions Judge are probable but do not

unmistakably point to complicity of the accused alone.

23. In view of the assurance given by Samadhan P.W.2 that necessary articles would be given to accused persons when the accused persons attend the marriage of Baliram, there should have been no grudge in the minds of accused driving them to take such a serious step. Therefore, the evidence of motive in this case is extremely weak. Given the fact that there was no unimpeachable evidence about any ill-treatment by the accused persons prior to incident in the form of any report of evidence of settlement reached, etc., it seems that the possibility of entire story about quarrels and altercation in presence of Samadhan came to be imagined after the daughter was found missing and, later on, when her dead body was found floating in the river. Therefore, we are afraid that the conviction recorded by the learned Trial Judge cannot be upheld.

24. In the result, therefore, the appeal is allowed. The conviction of the appellants for offences punishable under Sections Sections 498A, 302, and 201 read with Section 34 of Penal Code, and the

resultant sentences inflicted upon them are set aside. Bail bonds, if any, furnished by the appellants shall stands cancelled. Fine if any paid be refunded to the accused.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)